

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF THE
KINGDOM OF DENMARK (SKAT) TAX REFUND
SCHEME LITIGATION

SKATTEFORVALTNINGEN,

Plaintiff,

v.

JOHN VAN MERKENSTEIJN, RICHARD
MARKOWITZ, BERNINA PENSION PLAN TRUST,
RJM CAPITAL PENSION PLAN TRUST, 2321
CAPITAL PENSION PLAN, BOWLINE
MANAGEMENT PENSION PLAN, CALIFORNIA
CATALOG COMPANY PENSION PLAN, CLOVE
PENSION PLAN, DAVIN INVESTMENTS PENSION
PLAN, DELVIAN LLC PENSION PLAN, DFL
INVESTMENTS PENSION PLAN, LAEGELER
ASSET MANAGEMENT PENSION PLAN, LION
ADVISORY INC. PENSION PLAN, MILL RIVER
CAPITAL MANAGEMENT PENSION PLAN, NEXT
LEVEL PENSION PLAN, RAJAN INVESTMENTS
LLC PENSION PLAN, SPIRIT ON THE WATER
PENSION PLAN, and TRADEN INVESTMENTS
PENSION PLAN,

Defendants.

Consolidated Multidistrict Action

Docket No. 1:18-md-02865-LAK

This document relates to:
1:19-cv-10713-LAK

**STIPULATION AND ~~PROPOSED~~ ORDER
STAYING ACTION AS TO CERTAIN DEFENDANTS**

WHEREAS, in connection with a prior agreement (the “Agreement”), Defendants 2321

Capital Pension Plan, Bowline Management Pension Plan, Lion Advisory Inc. Pension Plan,

Clove Pension Plan, Delvian LLC Pension Plan, Mill River Capital Management Pension Plan,

Traden Investments Pension Plan, Next Level Pension Plan, Spirit on the Water Pension Plan, DFL Investments Pension Plan, Laegeler Asset Management Pension Plan, Davin Investments Pension Plan, and Rajan Investments LLC Pension Plan (together, the “Partially Released Defendants”) were partially released from any and all claims Plaintiff Skatteforvaltningen (“Plaintiff”) has or may have against the Partially Released Defendants in any way arising out of, in connection with or relating to reclaim applications filed with the Plaintiff to reclaim taxes withheld from dividends paid on Danish company shares owned or allegedly owned by the Partially Released Defendants between 2012 and 2015;

WHEREAS, the parties are desirous of avoiding unnecessary and duplicative litigation;

WHEREAS, the Partially Released Defendants have not answered or otherwise responded to Plaintiff’s Amended Complaint; and

WHEREAS, the remaining Defendants in this action, John Van Merkensteijn, Richard Markowitz, Bernina Pension Plan Trust, RJM Capital Pension Plan Trust, and California Catalog Company Pension Plan, have through their respective counsel asserted they do not object to this Stipulation and [Proposed] Order;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for Plaintiff and the Partially Released Defendants, that, subject to the approval of the Court, this action is hereby stayed with respect to the Partially Released Defendants;

IT IS FURTHER STIPULATED AND AGREED that, except to the extent covered by releases in the Agreement, the Partially Released Defendants will be bound by the highest of any judgment entered in this action against any of Defendants John Van Merkensteijn, Richard Markowitz, Bernina Pension Plan Trust, and RJM Capital Pension Plan Trust (“the JVM/RM Defendants”) as if such judgment were entered as against the Partially Released Defendants,

provided, however, that if Plaintiff and the JVM/RM Defendants settle this action prior to judgment, such that the Plaintiff recovers 100 percent of the refunds Plaintiff paid in response to all refund claims submitted by the Partially Released Defendants, the action will be dismissed with prejudice as to the Partially Released Defendants and Plaintiff shall provide a release to the Partially Released Defendants no less favorable than that provided to the JVM/RM Defendants; and

IT IS FURTHER STIPULATED AND AGREED that, to the extent a settlement between Plaintiff and the JVM/RM Defendants does not result in Plaintiff recovering 100 percent of the refunds Plaintiff paid in response to all refund claims submitted by the Partially Released Defendants, Plaintiff will move to terminate the stay of the proceedings as against the Partially Released Defendants, and the Partially Released Defendants will consent to such motion; and

IT IS FURTHER STIPULATED AND AGREED that if the claims against the JVM/RM Defendants are dismissed by the Court or otherwise result in a judgment with no damages awarded to Plaintiff, such dismissal or judgment with no damages will not be binding on or prejudice Plaintiff's claims against the Partially Released Defendants (except as required by law), Plaintiff will move to terminate the stay of the proceedings as against the Partially Released Defendants, and the Partially Released Defendants will consent to such motion; and

IT IS FURTHER STIPULATED AND AGREED that, upon the termination of the stay, the Partially Released Defendants will not seek to obtain discovery from Plaintiff above and beyond discovery produced or made available to the other defendants in this multi-district litigation prior to and during the pendency of the stay; and

IT IS FURTHER STIPULATED AND AGREED that from August 1, 2020 through the pendency of any stay of proceedings with respect to the claims against the Partially Released

Defendants, the Partially Released Defendants have taken and will take all reasonable steps in good faith to preserve any and all assets of the Partially Released Defendants, and the Partially Released Defendants represent that they have not transferred any assets at any time since November 19, 2019; and

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be executed in any number of counterparts by any of the signatories hereto and the transmission of an original signature page electronically (including by facsimile or portable document format) shall constitute valid execution of the Stipulation as if all signatories hereto had executed the same document. Copies of this Stipulation executed in counterpart shall constitute one agreement.

Dated: New York, New York
January 6, 2021

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behalf of Defendants Next Level Pension
Plan, Spirit on the Water Pension Plan, DFL
Investments Pension Plan, Laegeler Asset
Management Pension Plan, Davin
Investments Pension Plan, Rajan
Investments LLC Pension Plan*

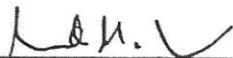
SO ORDERED:

Hon. Lewis A. Kaplan
United States District Judge

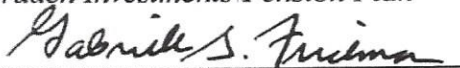
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Investments LLC Pension Plan*

SO ORDERED:



Hon. Lewis A. Kaplan
United States District Judge

1/7/2021

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